IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 387 OF 2005

Maharashtra State Electricity Bord. ... Appellant.
Versus.
M/s.Global Wool Alliance Pvt.Ltd. ... Respondent.

Ms.Deepa Chavan i/by M/s.Little & Co. for the Appellant.

Shri Bharat Vaishnawa for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. Admit. The Respondent waives service. The Respondent is the original Plaintiff and the Appellant is the original Defendant. The Application for temporary injunction made by the Respondent/Plaintiff has been allowed by passing the following order:

(1) The Notice of Motion taken out by the Plaintiffs is partly allowed.

(2) The Defendants are thereby restrained from implementing their letters/notices dated 24/4/2000 and 8/6/2000 from disconnecting power supply to the Plaintiffs factory situated at Kalamgaon Shahapur, Dist. Thane.

(3) The Defendants are further restrained from

closing or sealing any of the 3 Diesel Generating Sets installed by the Plaintiffs at the factory.

(4) The Plaintiffs are directed to obtain permission as required under the provisions of Electric Supply Act 1948 in respect of 3rd Diesel Generating Set installed by him at his factory premises and shall not operate said Diesel Generating Set commenced by him on 29/3/1998, registered with the Chief Engineer (Electrical) P.W.D. till Defendants has approved the same by grant of necessary N.O.C./ Permission.

(5) Parties to hear their own costs.

(6) The Plaintiffs to serve upon the Defendants writ of summons returnable on 12th March 2000.

(7) Office to communicate to the Hon'ble High Court compliance of their order passed in First Appeal No.915/2000 dated 16th November, 2000.

2. The Respondent-company has filed an affidavit dated 25th March 2005 in this Court. In the said affidavit, it is stated in paragraphs 5 and 6 as under:

(5) At the outset, I further say and submit that the present Appeal and Application taken out therein have become infructuous, as previously the electricity supply which was given to the Respondents was through "RURAL FEEDER" and the said supply was not suitable to meet the requirements of the respondents as there was no continuous power supply. Thereafter, on an application being made by the Respondents herein to the Applicants, from the month of August 2004 the electric supply is being given viz. "KARDI EXPRESS FEEDER", which is suitable for the requirements of the Respondents and in view thereof the Appeal from Order has become infructuous. I may respectfully say and submit that the Appeal from Order is not maintainable.

(6) I say that, apart from above, as per the recent developments that have taken place after the Applicants taking out the aforesaid Application, the Applicants have been supplying electricity to the Respondents under KARDI EXPRESS FEEDER instead of RURAL FEEDER and there is no reason for the Respondents to use the D.G.sets. The supply is available from Kardi Express Feeder, which is suitable for the requirements of the Respondent and the

D.G.Sets are now kept as a stand by only to be used when supply from Kardi Express Feeder is not available on account of load shedding etc.

By order dated 12th April 2005 time was granted to the learned Counsel appearing for the Appellant to take instructions as regards the statements made by the Respondent in paragraphs 5 and 6 of the said affidavit.

3. Today the learned Counsel appearing for the Appellant states that if the Respondent-company agrees not to use two D.G.Sets simultaneously when supply is available to them from the Appellant, the Appellant-Board will give uninterrupted supply to the Respondents through their Kardi Express Feeder. The learned Counsel appearing for the Respondent states that if the supply is available from Appellant-Board through Kardi Express Feeder, the Respondent will not use the two D.G.Sets and the said D.G.Sets will be used only in the event there is a disruption of electricity supply by the Appellant. He states that the third D.C. Set will not be used by the Respondent as there is no permission granted by the Competent Authority under the provisions of the Electricity Supply Act, 1948, in respect of the said third D.G.Set. The learned Counsel appearing for the parties have stated that the statements which are recorded above are for the limited purpose of considering the prayer for grant of interim relief in

the suit and the said statements are without prejudice to the rights and contentions of both the parties in the pending suit. The learned Counsel appearing for the parties state that all contentions of the parties in the pending suit may be kept expressly open.

4. In view of the statements made above, the impugned order needs modification and hence the following order is passed which will stand substituted in place of the impugned order:

(i) Till disposal of the pending suit, the Respondent/Plaintiff is restrained from using the two Diesel Generating Sets so long as there is an uninterrupted power supply by the Appellant-Board through Kardi Express Feeder. The Respondent/original Plaintiff-company will be entitled to use the said two Diesel Generating Sets only in the event of disruption of power supply through Kardi Express Feeder.

(ii) The Respondent-company is restrained from using the third Diesel Generaing Set till final disposal of the suit.

(iii) All contentions of the parties in the pending suit are expressly kept open.

(iv) It is made clear that as and when the order straying the hearing of the suit is vacated, the learned trial Judge will hear the suit uninfluenced by the prima-facie findings recorded in the impugned Judgment and order and the Order passed in this Appeal.

(v) Appeal is disposed of in the above terms with no order as to costs.

Judge.